



Battle Creek Zoning Board of Appeals

Staff Report

Meeting: June 8, 2010

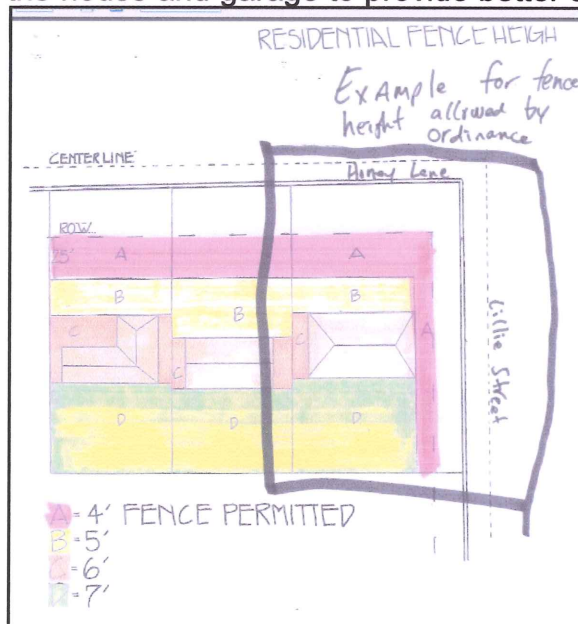
To: Zoning Board of Appeals
From: Glenn Perian, Senior Planner
Subject: Petition for a dimensional (fence) variance (Z-07-10) to permit the installation of a six (6") foot tall fence in a front yard on residentially zoned property located at 166 Honey Lane.

Summary

This report addresses a petition from Hollis Conway seeking approval for a Fence Variance (Z-07-10), to install a six (6") foot tall privacy fence in the front yard fronting Lillie Street at 166 Honey Lane.

Background/Project Information

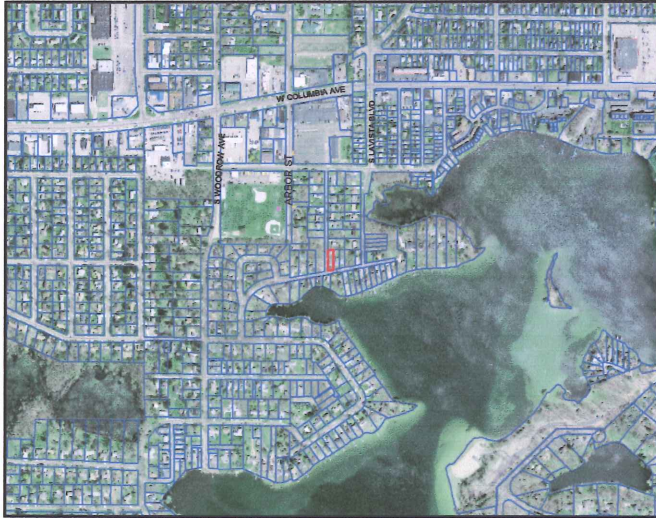
The subject site is located at the intersection of Honey Lane and Lillie Street. The residential property is rectangular in shape with road frontage on two sides and located within the R-1B (Single Family Residential) District. The property is approximately 51.5' wide and 183' feet long. Fences in Residential District are governed by Chapter 1298.05(b). In a front yard, twenty five feet or less from a street right of way, fences shall not exceed four feet in height. The Appellant would like to construct a "6" or 5' fence where only a 4' fence is allowable". Currently, a split rail style fence runs the length of the property on both street frontages and the Appellant would like to replace the existing split rail fence with a privacy type fence along Lillie Street between the house and garage to provide better security and privacy for the back yard.



Public Hearing and Notice Requirements

An advertisement of this public hearing was published in the Battle Creek SHOPPER NEWS on Thursday, May 20, 2010 – not less than the 15 days before the hearing as required by State Law and ordinance.

Notices of the public hearing were also sent by regular mail on March 17, 2010 to 45 property owners and occupants located within 300 feet of the subject parcel.



Aerial Photograph of the Subject Site

Surrounding Land Uses

The subject property is located in a residential neighborhood on the northwest side of Goguac Lake.

Applicable Zoning Ordinance Provisions

Chapter 1234.04 (b) (1) authorizes the Zoning Board of Appeals to grant variations in the yard requirement of any district where there are unusual and practical difficulties in the carrying out of the requirements of the Zoning Code due to the irregular shape of the lot or topographical conditions, provided that such a variation will not seriously affect any adjoining property or the general welfare of the public; and

Chapter 1234.04 (b) (2) authorizes the Zoning Board of Appeals to grant variations, upon appeal, whenever a property owner can show that strict application of the provisions of the Zoning Code relating to the use of buildings or structures or to the use of land will impose upon them unusual and practical difficulties or hardship. This section requires that such variations of the strict application of this Zoning Code as are in harmony with its general purpose and intent, but only when the Board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variation from the Master Plan, as established by the Zoning Code, and that the surrounding property will, at the same time, be properly protected.

Analysis

The Appellant is requesting a fence height variance that would authorize the installation of a six (6') foot privacy fence in a front yard, contrary to limitations outlined in chapter 1298 of the Planning and Zoning Code. The Appellant has stated in the supporting material that privacy and security are the main reasons for the fence. Drawings of the lot, proposed location of the fence, and an example of the proposed fencing material have been furnished by the Appellant. The Appellant has also supplied reasons supporting the request for appeal in a cover letter and as part of the application and they are included with the application and part of this report.

Is there something unique about this lot or property that makes relief necessary? The minimum lot width standard for properties located in the R-1B zone is 60'. The subject lot is approximately 51.5' wide (roughly half the size of other lots in the neighborhood) and has frontages on two streets. These two factors make the lot different than standard lots in the R-1B zone within the City and would impact the fencing height allowed in the rear yard. The subject property and 164 Honey Lane were at one time a single lot in the White and Hunt Addition Plat. A split occurred prior to 1949 when the homes were constructed.

- We would suggest that if a variance is granted a survey be done to show the exact location of the property line in relation to the street.
- Additionally, in order to not create a hazard along Lillie Street for cars backing out of the driveway, we would also suggest the Board consider Chapter 1298.08 "Nuisances and Abatement" that states that fences should not create a hazard or endangerment when deliberating on this case. We would suggest that if a variance is granted, the northern portion of the proposed fence be angled starting at the property line at least 10' south of the driveway, towards the garage to comply with Chapter 1298.08 of the Ordinance.
- Also, we would like the Board to consider possibly allowing a five foot privacy fence with a one foot decorative top (see the example below) to minimize any impact the proposed fence may have on neighboring properties.



FINDINGS AND RECOMMENDATION

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the conditions listed below are satisfied. Planning staff has reviewed these conditions and believe that each condition can be justified in an affirmative manner. We have provided a rationale for each condition set forth below for Dimensional Variances. Therefore, The Planning staff recommends that the Zoning Board of Appeals approve the Dimensional Variance (Z-07-10)

based on the following findings contained in this staff report along with the following conditions of approval.

- 1) Staff finds that there is an unusual and practical difficulty specific to the property in question due to the narrowness of the corner lot in this particular case.
- 2) Granting the variance and thereby permitting the applicant to move forward with the project in spite of the fact it is not in compliance with the zoning ordinance will not seriously affect any adjoining property or the general welfare of the public in that the proposed fence will be located across the street from a vacant lot, as shown by aerial photo and verified by a site visit.
- 3) Staff believes that if the variance in question is granted the property will still be in harmony with the general purpose and intent of the R-1B zoning district in that fences are permitted in rear yards of residential properties and a fence of this nature is a property right offered to all residents. The Applicant is not requesting beyond what a majority of other property owners are allowed to do.
- 4) Staff believes that if the Zoning Board grants the variance, the height of the fence will not serve merely as a convenience to the applicant and will alleviate some demonstrable practical difficulty so great as to warrant a variation to the Master Plan and the surrounding property will, at the same time be protected in that the proposed fence will not impact neighboring properties or the neighborhood in general.

If the Zoning Board finds that all of the above conditions have been satisfied, then all of the following standards must be met, as well.

- a) Staff believes that the Appellant has clearly demonstrated that practical difficulty will in fact exist if the variance is not granted in that the subject lot is only 51.5' wide and is located on two street fronts. A fence constructed in accordance with ordinance regulations would severely impact the backyard area of the subject lot.
- b) Staff believes that the appellant has not created the practical difficulty associated with this request. The subject site is a corner lot in an approved subdivision and the home was built in 1949.
- c) Staff believes that the practical difficulties are exceptional and peculiar to the property of the person requesting the variance for the reasons stated in item #1 above.
- d) Staff believes that the alleged practical difficulties result from conditions which do not generally exist throughout the City in that most residential lots are interior lots and this particular lot is quite narrow at 51.5'.
- e) The Appellant has furnished documentation to indicate that practical difficulties do, in fact, exist and Staff thinks that the furnished documentation relative to the unique narrowness and location of the lot meets the standards outlined in the Zoning Code authorizing the Board to grant the variance.

- f) Staff does not believe the term “practical difficulty” is deemed financial hardship in this case.
- g) Staff believes the alleged practical difficulty which will result in a failure to grant the variance is substantially more than a mere inconvenience in this case. As stated previously, the lot is historically quite narrow and is located on a corner.
- h) Staff thinks that by allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by the Zoning Code, the individual practical difficulties that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.
- i) Every finding of fact of the Board shall be supported in the record of proceedings of the Board.
- j) Nothing contained in this section shall be construed to authorize the Board to change the terms of this Zoning Code.

Conditions of Approval

C1: That the top portion of the privacy fence will be of a see through material (like the example above) to ensure that finding #2 will remain in effect (will not seriously affect any adjoining property or the general welfare of the public.

C2: That the true property line will be defined and the proposed fence will not be located in the public ROW.

C3: That the proposed privacy fence is installed at an angle starting at least 10’ south of the existing driveway and is angled towards the S.W. corner of the garage in order to create clear vision for vehicles backing out of the driveway on to Lillie St. in accordance with Chapter 1298.08 of the Planning and Zoning Code.

Attachments

The following information is attached and made part of this Staff Report.

1. ZBA Petition Form (Petition #Z-07-10),
2. Site drawing showing proposed fence location
3. Letter from Appellant stating reasons for fence
4. Photos of existing fence and property
5. Photo of proposed fencing material
6. Signatures of neighbors support
7. Assessing General Property Information

Date: 4/29/10

Appeal No. Z-07-10

APPLICATION FOR A VARIANCE
ZONING BOARD OF APPEALS
City of Battle Creek, Michigan

An Appeal to the Zoning Board of Appeals to authorize a variance from the requirements of the Planning and Zoning Code (Part Twelve) of the City of Battle Creek.

Name of Appellant: Hollis Conway

Address: 166 Honey Lane Phone: 269-830-2900

Name of Owner (if different from Appellant): _____

Address: _____ Phone: _____

TO THE ZONING BOARD OF APPEALS: Request is hereby made for permission to:
(Choose One) **Extend** **Erect** **Waive** **Use** **Convert** **Enclose**

Remove the existing four foot decorative fence to replace with a six foot privacy fence along west side of the property.

contrary to the requirements of Section(s) 1298.05 (b)(2) + (5) of the Planning and Zoning Code, upon the premises known as 166 Honey Lane Battle Creek, MI, in accordance with the plans and/or plat record attached.

The proposed building or use requires Board action in the following area(s):

To grant an exception for placement of a 6' or 5' fence where only a 4' is allowable.

Property/Tax I.D.# No. 9460 - 23 - 917 - 0

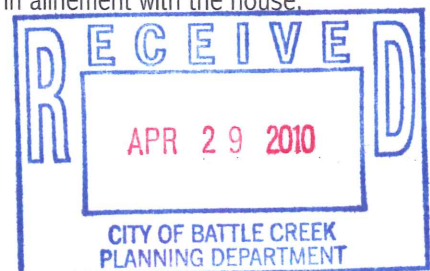
Size of the Lot: Width 51.5' Depth 188.2'

Size of Proposed Building: Width _____ Depth _____ Height _____

The following reasons are presented in support of this appeal (complete each section):

- a) This property cannot be used in conformance with the ordinance without the requested variance because:

One third of the back yard and would be unusable due to fence placement in alinement with the house.



- b) This problem is due to a unique situation not shared in common with nearby property owners because:

Our property is located on a corner and the only property with a complete view of the entire yard. There is access to both the front and rear door with very little security.

- c) Granting the variance would not alter the essential character of the area because:

A 6' fence would not only provide privacy for our property but also prevent people from looking into our neighbors' yards. The fence would not be in direct view of any of our neighbors homes nor interfere with any line of sight for vehicles.

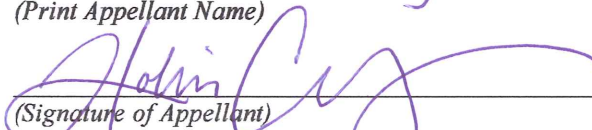
- d) The problem is not self-created because:

The property size and placement of the house was predetermined and cannot be changed.

- e) **USE VARIANCES ONLY** It is not possible to use this particular property for any other use currently allowed in the zoning district because:

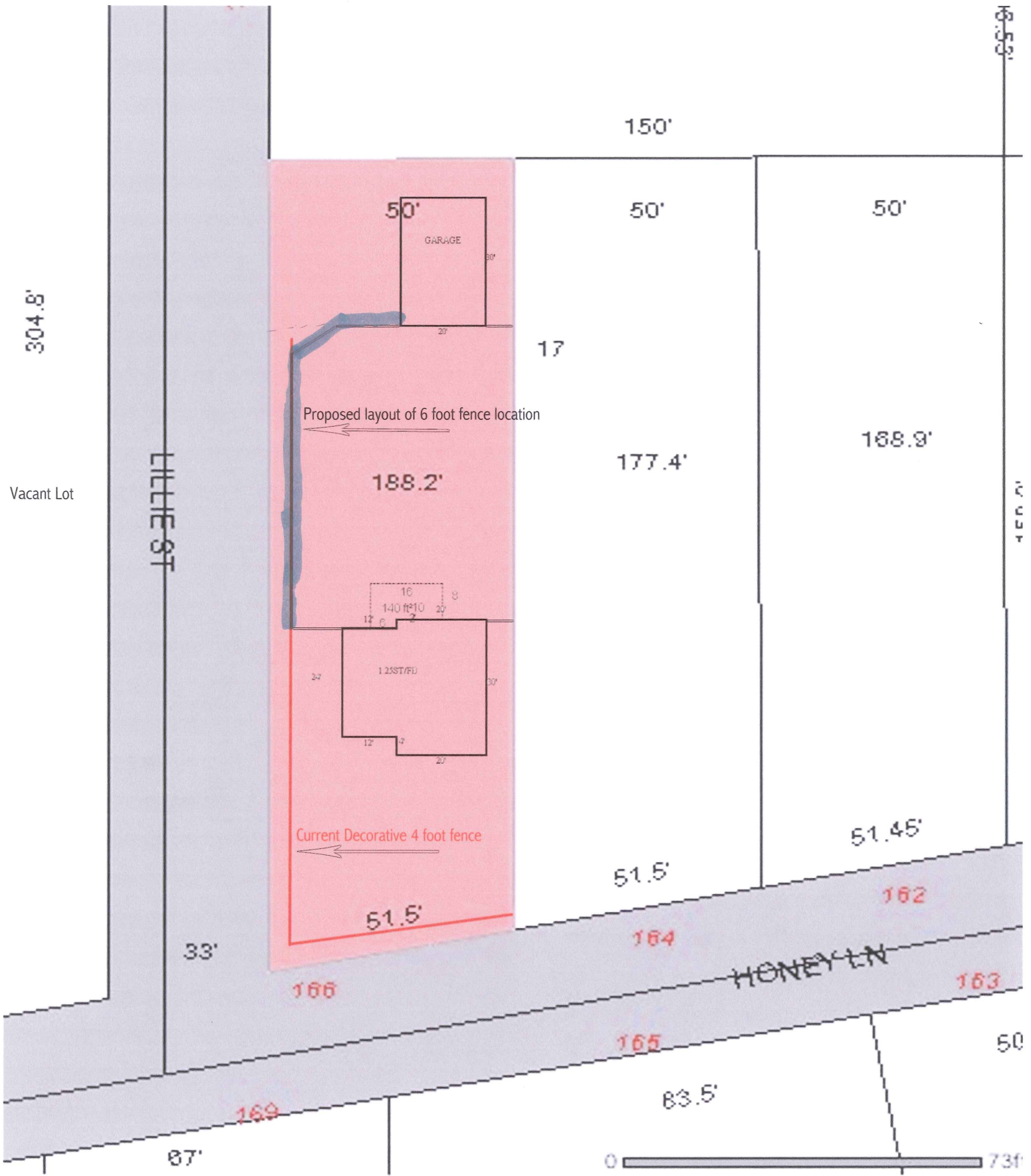
*I hereby affirm that, to the best of my knowledge, all the above and accompanying statements and drawings are correct and true. **In addition, I give permission to the City of Battle Creek's Planning Department staff to access my property, if necessary, to take photographs of the subject of this appeal.***

Hollis Conway
(Print Appellant Name)


(Signature of Appellant)

166 Honey Lane
(Address of Appellant)

If you require additional information or assistance in filling out this application, please contact the Planning Department at (269) 966-3320.



Lack of Security:

We have posted "No Soliciting" and "Beware of Dog" signs on our current fence but that is no deterrent to the determined salesmen and kids with cookie and candybars. We have had people come to our back door when they do not get an answer from the front door. Once this past winter, we had two people come into our screened-in back porch while we were home and attempt to open the backdoor. Only after Jamieie yelled did they run off.

Both of our cars have been broken into with mostly CDs and loose change being the major items they take. Our neighbors have had GPS systems stolen and laptop computers. Not to mention the suspicious rental property across the street and shady characters who hang around outside of it.

We do not live in a bad neighborhood, nor did we realize that we would have such problems when we bought the house. We specifically purchased in the neighborhood we are living in because we felt it was a safe area. We have made attempts to make the neighborhood more safe by contacting the Neighborhood association for an assessment of the street lighting.

We are nervous a 4 foot fence could easily be jumped or the gate unlatched providing very little if any security and defeating the major purpose of the fence to begin with. We feel there is not another alternative, other than moving. Our neighbors agree that a fence would not only benefit our property but also give them some privacy from the neighborhood foot traffic

Lack of Privacy:

Our summers are spent watching out neighbors walk their dogs, ride their bikes, run, jog, and STARE at us. We have no corner of our yard that is not exposed to people passing by. Not that we don't like our neighbors or have anything to hide but it gets old seeing everyone watch you as they walk by.

Danger to our pets:

Neighborhood kids antagonize our dogs by attempting to throw things at them and spit on them (we have been tempted to get squirt guns and hunt them down). Our dogs are very small (17lb and 5lb) and currently we have the invisible fence which keeps our dogs in the yard. We worry that leaving them outside alone, larger dogs or other animals could wander into the yard and harm them.







MERCHANTS METALS

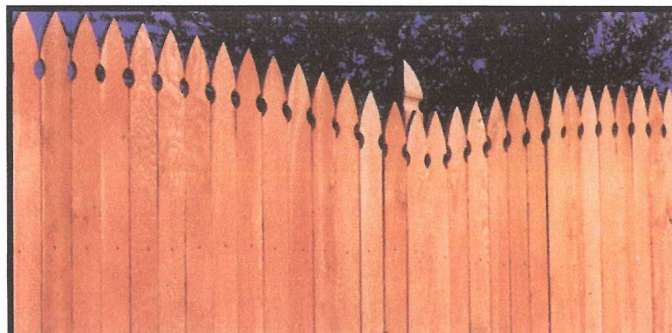
The First Name In Fence

Natural Styles & Distinctive Statements!

Western red cedar rough sawn cedar boards and posts can be custom-styled for a truly distinctive appearance, such as the gentle slopes of convex and concave styles. 1x4 and 1x6 boards, 2x4 rails, 4x4 and 6x6 posts are available in standard sizes.



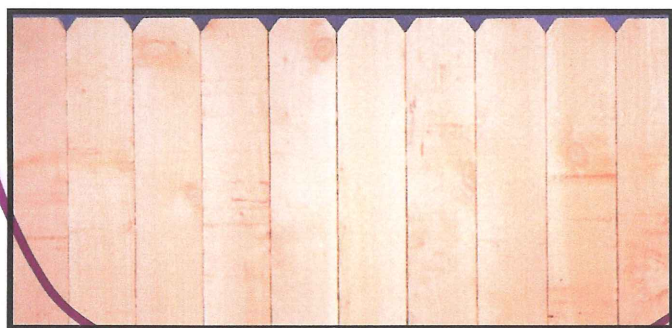
Concave Design



Convex Design

Dog Ear

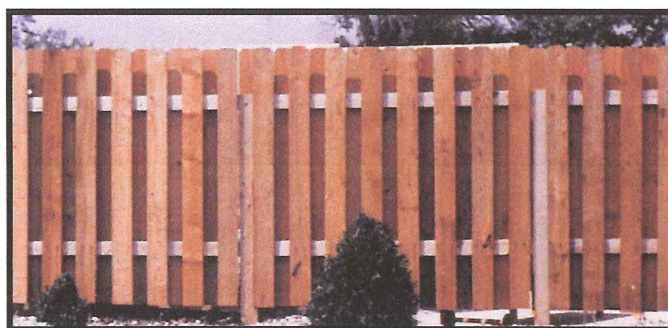
Western red cedar boards have flat tops with notched sides. Design your own landscape look from solid panels to spaced boards. Available in 1x4x4 to 1x6x8 boards; 2x4 rails in 8' and 10' lengths; 4x4 posts in 7' to 10' lengths.



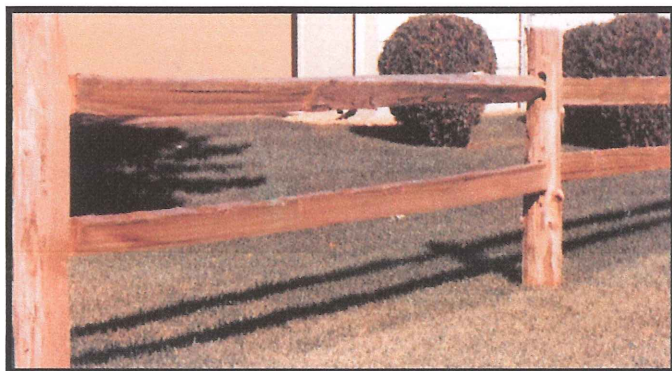
Dog Ear

Shadow Box

Privacy with style. Natural sawn cedar boards create decorative shadow box panels for long, maintenance free life and beauty. Available in 6'x8' panels; 4x4 posts in 7' to 10' lengths, 6x6 in 8' and 9' lengths.



Shadow Box



Split Rail

Split Rail

Western red cedar hand split fencing is available in 2 or 3 rail, 10' sections.

Hollis Conway

166 Honey Lane, Battle Creek, Michigan 49015

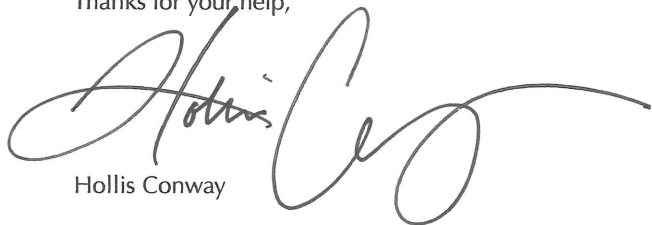
Tel: 269-964-9675 hollie214@comcast.net

Tuesday, May 11, 2010




To our neighbors,

Jamiee and I have asked the city to provide us with a variance to erect a privacy fence, starting from the back corner of our house to the driveway. We would like you to sign at the bottom if you are in support/not opposed to this request.

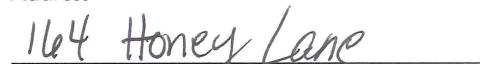

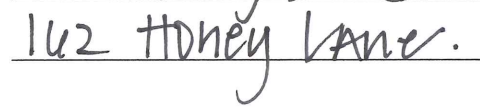
Thanks for your help,


Hollis Conway

Name

Address







RECEIVED PAYMENT

PLANNING DEPARTMENT
City of Battle Creek, Michigan

To: Holli's Conway
166 Honey Ln
Battle Creek, MI 49015

Date: 4/29/10

For: Zoning Variance to allow 6' or 5' Height Amount 60.00
in a Side corner lot where 4' is only allowed
for property located at 166 Honey Ln.

Total Paid: 60.00

For Deposit:

ck # 2314

Office of Planning and Community Development
77 E. Michigan Avenue, Suite 204, Battle Creek, MI 49017
Telephone: 269-966-3320 Fax: 269-966-3529

H. C. CONWAY 10/03
C500-313-108-118
166 HONEY LN
BATTLE CREEK, MI 49015
(269) 964-9875

2314
74-7673/2724

4/29/10 Date

Pay to the Order of The City of Battle Creek \$ 60.00

Sixty 00/100 Kellogg Community Federal Credit Union Dollars

KELLOGG COMMUNITY FEDERAL CREDIT UNION
41 Second St. - Battle Creek, MI 49014

For Holli's Conway MP

⑆ 2724 76734 ⑆ 70000 254 9870 30 ⑆ 2314

Harland Clarke